

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking monetary compensation of \$25,000.00 under the Act or tenancy agreement from the Landlords.

The Landlords were personally served with the Notice of Hearing and Application for Dispute Resolution, on May 9, 2009, with the police in attendance. I find they were served in accordance with the Act. Despite this, neither Landlord attended the hearing.

In an earlier hearing, the Landlords argued that this was an excluded tenancy under section 4 of the Act, because the Landlords and Tenant shared kitchen and washroom facilities. No determination was made on this particular issue in the earlier hearing, therefore, I heard the evidence of the Tenant on this matter.

The Tenant provided affirmed evidence that the basement suite had its own bathroom and kitchen facilities, and had a separate entrance. He explained that on four or five occasions the Landlords asked to use the oven in the basement suite and were allowed to do this. The Landlords lived upstairs and had their own full kitchen and bathroom facilities. Therefore, based on the uncontradicted evidence of the Tenant, I find that this rental unit was not excluded under the Act and I have jurisdiction to make a determination in this matter.

Issues(s) to be Decided

Is the Tenant entitled to the monetary compensation sought?

Background and Evidence

The Tenant rented the basement suite in the residential property owned by the Landlords, in October of 2008. The Tenant had a room mate share the basement unit with him, however, I find that this is largely irrelevant to the matters before me.

The monthly rent for the unit was \$425.00, and the Tenant paid a security deposit of \$200.00 in October of 2008.

On or about March 4, 2009, the Landlords physically evicted the Tenant and his belongings from the rental unit. The Landlords provided no Notice to End Tenancy, or other cause for their actions. They simply came down to the rental unit and told the Tenant to, "... get the F*** out...", or words to that effect. The Tenant had already paid the March 2009 rent in full.

They placed the Tenant's belongings on the driveway and would not let the Tenant return to the rental unit. The police had to attend for a period of two hours to keep the peace.

The Tenant ended up having to move in with his son for a period of time, until he could find suitable accommodations. He had to borrow clothes and acquire personal items.

The Tenant attended the rental unit to pick up his belongings. Although much of his property was returned to him, the Landlords either kept or caused to be lost or taken, many items of personal and monetary value.

In particular, war medals from the Tenant's father and his uncles are missing. A gold watch the Tenant had received for years of service was also not recovered. A witness verified that the Tenant had received such a watch. There were also other household items and personal belongings missing.

The Tenant tried to contact one of the Landlords, who is employed by a well known realty company, to recover these items but was unsuccessful.

The Tenant provided evidence that he suffers from multiple sclerosis. The Tenant had a witness testify that she met with the Tenant during this time period. The witness, who is a qualified professional counsellor with the Multiple Sclerosis Society, provided affirmed testimony that she witnessed the Tenant suffer severe health conditions due to the eviction. She testified his symptoms became extreme and he suffered from greater than normal mobility issues. Her testimony was that the actions of the Landlords extremely exacerbated his condition.

Analysis

Based on the foregoing, the uncontradicted evidence of the Tenant, and on a balance of probabilities, I find that the Landlords breached the Act, and therefore, the Tenant is entitled to monetary compensation under the Act.

I found the testimony and evidence of the Tenant and his witnesses was straightforward, credible and not exaggerated.

I found the actions of the Landlords in this matter to be callous, high handed and in total disregard for the laws pertaining to residential tenancies and the common law.

The Landlords breached the provisions of the Act by failing to give a proper Notice to End Tenancy, illegally evicting the Tenant, and disregarding the regulation requiring them to make an inventory and safe guard his personal property.

I also find the actions of the Landlords caused pain, duress and suffering to the Tenant. These actions were intentional and caused the Tenant to suffer needlessly and beyond what must already be a daily struggle with multiple sclerosis. I find that it was entirely

foreseeable by the Landlords that taking such action to wrongfully evict this Tenant would cause him additional duress, pain and suffering. Therefore, I order them to pay the sum of **\$10,000.00** to the Tenant for his pain, duress and suffering, loss of quiet enjoyment of the rental unit and their negligent breach of the obligations and duty of care owed to the Tenant.

I allow the Tenant's claim in the amount of **\$1,500.00** for the missing watch. I also allow the Tenant **\$2,000.00** as a global amount for the war medals and replacement of other items that the Landlords failed to return to the Tenant.

Pursuant to section 38 of the Act, I must also order the Landlords to pay the Tenant double the security deposit held of \$200.00, along with the interest of \$0.75, for a total of **\$400.75**.

Lastly, I order the Landlords to return to the Tenant the rent for March of 2009, in the amount of **\$425.00**.

Therefore, I find that the Tenant has established a total monetary claim of **\$14,325.75** comprised of the above described amounts.

I grant the Tenant an order under section 67 for the balance due of **\$14,325.75**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlords breached several provisions of the Act when they wrongfully evicted the Tenant, and did not take the required steps with regard to his personal property.

The Landlords actions also caused the Tenant needless pain and suffering. It was foreseeable by the Landlords that taking such action against the Tenant would cause him further pain and suffering.

I find the Tenant has established a total monetary claim of **\$14,325.75**, and he is granted an order enforceable in Provincial Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 24, 2009.

Dispute Resolution Officer